

# STATE OF COLORADO

## Colorado General Assembly

Mike Mauer, Director  
Legislative Council Staff

**Colorado Legislative Council**  
200 East Colfax Avenue Suite 029  
Denver, Colorado 80203-1716  
Telephone 303-866-3521  
Facsimile 303-866-3855  
TDD 303-866-3472



Dan L. Cartin, Director  
Office of Legislative Legal Services

**Office of Legislative Legal Services**  
200 East Colfax Avenue Suite 091  
Denver, Colorado 80203-1716  
Telephone 303-866-2045  
Facsimile 303-866-4157  
Email: olls.ga@state.co.us

## MEMORANDUM

**TO:** Mary Henry and Andrew O'Connor  
**FROM:** Legislative Council Staff and Office of Legislative Legal Services  
**DATE:** August 21, 2017  
**SUBJECT:** Proposed initiative measure 2017-2018 #44 concerning severance taxes on oil and gas

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Earlier versions of this proposed initiative, proposed initiatives 2017-2018 #20 and 2017-2018 #38, were the subject of memoranda dated April 5, 2017, and July 17, 2017, which were discussed at public meetings on April 7, 2017, and July 19, 2017. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

## **Purposes**

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. For tax years that begin on and after January 1, 2019, to make the following changes to the oil and gas severance tax:
  - a. For gross income that is less than \$300,000, to either raise the rate by 5 percent or exempt the gross income from the tax;
  - b. For gross income that is \$300,000 and over, to increase the tax rate from 5 percent to 10 percent;
  - c. To keep the production amounts that qualify for the stripper well exemption the same or to halve the amounts; and
  - d. To keep the credit allowed against the severance tax for property taxes paid the same or to eliminate it.
2. To possibly eliminate the oil and gas severance tax in 2018.
3. To possibly modify the allocation of the oil and gas severance tax. If so, to require a portion of the revenues to be used exclusively for establishing all-day kindergarten and public school funding and for a new program that provides medical care and treatment for people suffering negative health impacts caused by oil and gas production in those communities impacted by oil and gas production.

## **Substantive Comments and Questions**

The substance of the proposed initiative raises the following comments and questions:

1. In the legislative declaration, there is a reference to the "2017 general election." Do you mean the "2018 general election"?
2. Subsections (1)(b) and (1)(c) of section 39-29-105, C.R.S., in your proposed initiative both apply "for each taxable year commencing on or after January 1, 2019." It is unclear how the Department of Revenue would be required to enforce these conflicting provisions and whether the tax revenue would be distributed under subsection (2)(b) or (3) of section 39-105 (2)(b). How did you intend for this section to apply?

3. If the changes to subsection (1)(b) are approved by voters, the taxes for 2018 would not be collected. Is it your intent that all oil and gas production for 2018 would be exempt from the tax?
4. In light of your comments at prior meetings and the fact that you have created a new subsection (1)(c) that applies to the same tax years, did you intend for subsection (1)(b) to apply "for each taxable year commencing on or after January 1, 2000, BUT PRIOR TO JANUARY 1, 2019"?
5. If the answer to question 4 is yes, but you also intended to increase the tax rate on each of the four gross income brackets for taxable years prior to January 1, 2019, then please refer to the questions and comments about the similar change included in the July 15, 2017, memorandum about proposed initiative 2017-2018 #38. If you did not intend to change the tax rate for tax years that commence prior to January 1, 2019, then the indented language on the top of page 2 of the proposed initiative is incorrect, and instead should mirror the language of the current law as follows:

Under \$25,000	2%
\$25,000 and under \$100,000	3%
\$100,000 and under \$300,000	4%
\$300,000 and over	5%
6. If you intended for the severance tax to be imposed under subsection (1)(b) for taxable years commencing on or after January 1, 2019, then why add the new subsection (1)(c) to section 39-29-105, C.R.S., and the related provisions for revenue distribution?

## **Technical Comments**

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Each statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, to add a new subsection to section 39-29-101, C.R.S., the amending clause would read: "In Colorado Revised Statutes, 39-29-101, **add** (4) as follows:".

2. When referencing a statutory cite, please note that our office no longer uses the paragraph, sub-paragraph, and sub-subparagraph designations, only subsection. For example, rather than saying "paragraph (c) of this section" you would say "subsection (1)(c) of this section."
3. It is standard drafting practice to use SMALL CAPITAL LETTERS to show new language being added and to use stricken type to show language being removed from the Colorado Revised Statutes.
4. It is standard drafting practice to set off nonessential phrases (i.e., introductory, parenthetical, or prepositional phrases) with commas.
5. The following words are misspelled:
  - a. "Addidtion" (page 1) should be spelled "addition."
  - b. "Provosions" (page 2) should be spelled "provisions."
6. The phrase "all day-kindergarten" should be hyphenated as "all-day kindergarten."